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United States Court of Appeals for the Federal Circuit

Robert Wilmer Rodenbeck, *et al.*,

Petitioner or Appellant

v. **PETITION FOR REVIEW /
NOTICE OF APPEAL**

Jon W. Dudas, Director of the United
States Patent and Trademark Office,

Respondent or Appellee.

Robert Wilmer Rodenbeck, Roger Keith Russell, and Michael Lee Long hereby petition/appeal the court for review of the decision 2007-0981 sustaining the rejection of claims 1-7, 10-16, and 18-29 of Patent Application No. 10/803,434 of the Board of Patent Appeals and Interferences entered on July 18, 2007.

A copy of the decision appealed from is attached.


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PROOF OF SERVICE

I hereby certify that the attached Petition for Review/ Notice of Appeal on September 14, 2007 was served by first class mail, postage prepaid in envelopes addressed to:

- 1) Jon W. Dudas, the Director of the United States Patent and Trademark Office, Box 8, U.S. Patent and Trademark Office, Washington, DC 20231¹;
- 2) United States Patent and Trademark Office, Mail Stop 8, Director of the U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450².

September 17, 2007



¹ 37 CFR §1.302 (a)

² Practice Notes to CAFC Rule 15; MPEP 1216.01.

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The opinion in support of the decision being entered today
is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT WILMER RODENBECK, ROGER KEITH RUSSELL,
and MICHAEL LEE LONG

Reply due: 9-18-07

Rehearing petition

Docket 1: JP Docket 2: JP

Appeal 2007-0981
Application 10/803,434
Technology Center 2600

Decided: July 18, 2007

Before LEE E. BARRETT, JOSEPH F. RUGGIERO, and ALLEN R.
MACDONALD, *Administrative Patent Judges*.

RUGGIERO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from the Final Rejection of
claims 1-7, 10-16, and 18-29. As indicated at page 2 of the Examiner's
Answer, claims 18-26 have been allowed. Accordingly, only the rejection of

claims 1-7, 10-16, and 27-29 is before us on appeal. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellants' claimed invention relates to a security control system in which a remote access control system, which includes a remote access controller electrically coupled to a remote wireless communicator, receives wireless information from a central access control system. Upon receipt of information from the remote wireless communicator, the remote access controller uses the information to control locking and unlocking of a door. (Specification 1-2).

Claim 1 is illustrative of the invention and reads as follows:

-1. A wireless security control system for use in a facility having a plurality of doors, the wireless security control system comprising
a central access control system in which access information is stored,
and
a plurality of remote access control systems each being adapted to be mounted to a respective one of the doors of the facility to control the locking and unlocking of the respective door, the central access control system wirelessly transmitting access information to the plurality of remote access control systems independent of any users associated with the access information making any requests for rights to unlock any of the doors, each of the remote access control systems being configured to receive wirelessly and store at least some of the access information from the central access control system, each of the remote access control systems being configured to control the locking and unlocking of the respective door using the access information stored therein, each of the plurality of remote access control

systems making a decision whether to unlock the respective door in response to a user making an attempt to unlock the door based on the access information stored therein and without having to further communicate with the central access control system.

The Examiner relies on the following prior art references to show unpatentability:

Pilney	US 5,298,883	Mar. 29, 1994
Goldman	US 5,321,963	Jun. 21, 1994
Kniffin	US 6,072,402	Jun. 6, 2000 (filed Jan. 9, 1992)
Pinzon	US 6,161,005	Dec. 12, 2000 (filed Aug. 10, 1998)
MacLellan	US 6,177,861 B1	Jan. 23, 2001 (filed Jul. 17, 1998)
Denison	US 6,359,547 B1	Mar. 19, 2002 (filed Dec. 4, 1996)

Claims 1-7, 10-16, and 27-29, all of the appealed claims, stand rejected under 35 U.S.C. § 103(a). As evidence of obviousness, the Examiner offers Kniffin in view of Pinzon with respect to claims 1, 2, 4, and 10-12, adds Goldman to the basic combination with respect to claim 3, adds Pilney to the basic combination with respect to claim 5, 27, and 28, adds Denison to the basic combination with respect to claim 6, and adds MacLellan to the basic combination with respect to claims 7 and 13-16. Claim 29 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Kniffin and Pilney.

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Briefs and Answer for the respective details

ISSUES

- (1) Under 35 U.S.C § 103(a), with respect to appealed claims 1, 2, 4, 10-12, would one of ordinary skill in the art at the time of the invention have been motivated and found it obvious to combine Kniffin with Pinzon to render the claimed invention unpatentable.
- (2) Under 35 U.S.C § 103(a), with respect to appealed claims 3, 5-7, 13-16, 27, and 28, would the ordinarily skilled artisan have been motivated and found it obvious to modify the combination of Kniffin and Pinzon by adding various tertiary references to render the claimed invention unpatentable.
- (3) Under 35 U.S.C § 103(a), with respect to appealed claim 29, would the ordinarily skilled artisan have been motivated and found it obvious to combine Kniffin with Pilney to render the claimed invention unpatentable.

PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966). “[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability.” *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). Furthermore, “there must be some

articulated reasoning with some rational underpinning to support the legal conclusion of obviousness' . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ."

KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)).

ANALYSIS

With respect to the Examiner's 35 U.S.C. § 103(a) rejection of independent claim 1 based on the combination of Kniffin and Pinzon, after reviewing the Examiner's analysis (Answer 4-5), it is our opinion that the stated position is sufficiently reasonable that we find that the Examiner has at least satisfied the burden of presenting a prima facie case of obviousness. The burden is, therefore, upon Appellants to come forward with evidence and/or arguments which persuasively rebut the Examiner's prima facie case. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Briefs have not been considered and are deemed waived [see 37 CFR § 41.37(c)(1)(vii)].

Appellants' arguments in response to the stated rejection, as well as to the Examiner's comments at pages 13 and 14 in the "**Response to Argument**" portion of the Answer, focus on the alleged deficiency of Kniffin in disclosing the transmission of access information to the access control systems independent of any users' requests to unlock doors as

claimed. According to Appellants (Br. 5-6; Reply Br. 1-2), the user in Kniffin, in contrast to the claimed invention, must contact a clearinghouse with a request for a access to a locked door with the clearinghouse then transmitting the access information to the remote access control system.

We do not disagree with Appellants that various embodiments of the remote control locking system of Kniffin operate exactly as Appellants have stated. From our own independent review of Kniffin, however, it is also apparent to us that, as alluded to by the Examiner (Answer 13-14), other embodiments disclosed by Kniffin operate with preprogrammed access information in the lock and do not require any user access request communication with a clearinghouse. For example, the embodiment described at column 5, lines 40-59 of Kniffin involves the preprogramming of access information transmitted from a central access control system to a remote access control system at a door on a periodic basis, i.e., without any request by a user for access to the door. Again, Kniffin, at column 5, lines 53-55 states “[t]he door’s memory can be reprogrammed with updated authorization data daily, or at such interval as may be appropriate.”

For their part, Appellants contend (Reply Br. 2) that Kniffin’s use of the word “foregoing” (col. 5, l. 40) in describing the preprogrammed authorization embodiment must be interpreted to mean that the previously described user access request requirement must also be part of the preprogrammed embodiment. We find no basis for interpreting the disclosure of Kniffin in the manner suggested by Appellants. We fail to see the point of preprogramming access information into a lock access control if a user would still be required to request access authorization from a clearinghouse as contended by Appellants. In our view, the ordinarily

skilled artisan would have recognized and appreciated that any requirement for user access request from a central clearinghouse would defeat the purpose of preprogramming access authorization into the remote access lock control.

We make further reference to an additional embodiment of Kniffin which buttresses the view that different embodiments and variations thereof disclosed by Kniffin describe situations in which access information is programmed into the lock control and a user need not contact a central clearinghouse for access. In a variation of the cellular telephone embodiment described beginning at column 7, line 17 of Kniffin, a user utilizes a cellular telephone to transmit RF signals to a lock control system, which checks to see if the user is on a programmed list of authorized users, to gain access to a locked door without transmitting to a clearinghouse. (Kniffin, col. 7, ll. 36-37 and 44-49).

In view of the above discussion and analysis of the disclosure of Kniffin, we find that, although the Examiner's stated rejection included a reliance on Pinzon to provide a teaching of preprogramming access control information into a lock system independent of a user request for access, this teaching is cumulative to what is already disclosed by Kniffin. Accordingly, it is our opinion that, although we found no error in the Examiner's proposed combination of Kniffin and Pinzon as discussed *supra*, the Pinzon reference is not necessary for a proper rejection of independent claim 1 since all of the claimed elements are in fact present in the disclosure of Kniffin.

For the above reasons, since it is our opinion that the Examiner has established a prima facie case of obviousness which has not been overcome by any convincing arguments from Appellants, the Examiner's 35 U.S.C.

§ 103(a) rejection of independent claim 1, as well as dependent claims 2, 4, and 10-12 not separately argued by Appellants, is sustained.

We also sustain the Examiner's obviousness rejection of dependent claim 3 in which Goldman is added to the combination of Kniffin and Pinzon. Initially, we find Appellants' arguments (Br. 8-9; Reply Br. 2-3) related to the alleged deficiency in the applied prior art in providing a teaching of an exterior mounted antenna to be unpersuasive since, as alluded to by the Examiner (Answer 14), Kniffin in fact illustrates the receiving and transmitting antennas being mounted exteriorly of the lock housing 12. We also find no error in the Examiner's establishment of proper motivation for adding to the proposed combination the teachings of the Goldman reference, which illustrates in Figure 3 the control element 116 mounted on the inside of the door 112. In our view, the ordinarily skilled artisan would have recognized and appreciated the obvious security and environmental protection advantages of placing the wireless communication and remote access control circuitry on the inside of the door housing. As the Supreme Court stated in *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. at 1742-43, 82 USPQ2d at 1397, "[r]igid preventative rules that deny factfinders recourse to common sense, however, are neither necessary under our case law nor consistent with it."

With respect to dependent claim 5, we also find no error in the Examiner's establishment of proper motivation for adding Pilney's teaching of providing a receiving/transmitting switch to the proposed combination of Kniffin and Pinzon and, accordingly, we sustain this rejection as well. Appellants have made no separate arguments for patentability of this claim

but, instead, have chosen to rely on arguments made with respect to parent claim 1, which arguments we found to be unpersuasive as discussed *supra*.

We also sustain the Examiner's 35 U.S.C. § 103(a) rejection of dependent claim 6 in which the Denison reference is added to the proposed combination of Kniffin and Pinzon. Appellants (Br. 9; Reply Br. 3) attack the teaching of Denison as providing a disclosure of a wired port only as an alternative to a wireless port in contrast to the language of claim 6 which requires both wired and wireless communication. Our review of the disclosure of Denison, however, reveals that Denison does in fact provide for both wired and wireless communication. For example, in addition to the portion of Denison (col. 3, ll. 36-39) cited by the Examiner as teaching a wired port, Denison also provides for wireless communication as illustrated in the Figure 6 embodiment described beginning at column 9, line 50.

Turning to a consideration of the Examiner's obviousness rejection of dependent claims 7 and 13-16 in which the periodic updating features of the MacLellan reference are added to the proposed combination of Kniffin and Pinzon, we also sustain this rejection. Appellants' arguments (Br. 10-11) in response reiterate those made with respect claim 1 alleging the failure of MacLellan to provide a teaching of wireless transmission of authorization information from a central control to a remote access control independent of any user access request. As we discussed previously, however, such a teaching is found in the disclosure of Kniffin.

Lastly, we also sustain the Examiner's 35 U.S.C. § 103(a) rejection of dependent claims 27 and 28 and independent claim 29 in which the Pilney reference is added to Kniffin to address the "normally powered down" feature of these claims. Our review of Kniffin, however, indicates that this

teaching of Pilney is cumulative to what Kniffin already discloses and, accordingly, Pilney is not needed for a proper rejection of these claims. As described at column 3, lines 37-40 of Kniffin, each lock receiver in a locking system can be targeted by time division multiplexing “wherein each receiver awakens in staggered brief intervals to listen for messages.”

As a final commentary, we note that, as mentioned earlier, the Examiner has indicated (Answer 2) that claims 18-26 have been allowed. We find nothing on the record before us, however, which provides any reasons as to why these claims were allowed. We make the observation that independent claim 18 includes the feature of a plurality of central wireless communicators that are coupled to the central access controller. This feature is also present in dependent claim 14, a claim to which the Examiner applied the MacLellan reference in combination with Kniffin and Pinzon to address this feature. If the Examiner remains of the position that claims 18-26 should be allowed, a “Reasons for Allowance” should be included to ensure completeness of the record.

CONCLUSION

In summary, we have sustained the Examiner’s 35 U.S.C. § 103(a) rejections of all of the claims on appeal. Therefore, the decision of the Examiner rejecting claims 1-7, 10-16, and 18-29 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv)(effective September 13, 2004).

Appeal 2007-0981
Application 10/803,434



AFFIRMED

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